

Pension Benefit Guaranty Corporation

§ 4208.8

agreement in the year in which the requirements are satisfied to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA.

(b) *Credit for reduction.* The plan sponsor shall credit the account of an employer that satisfies the requirements of § 4208.4(c)(1) or (c)(2) with the amount of annual withdrawal liability that it paid in excess of the amount described in paragraph (a)(1) or (a)(2) of this section, as appropriate. The credit shall be applied, a revised payment schedule issued, refund made and interest added, all in accordance with § 4208.3(c)(4).

§ 4208.7 Adjustment of withdrawal liability for subsequent withdrawals.

The liability of an employer for a partial or complete withdrawal from a plan subsequent to a partial withdrawal from that plan in a prior plan year shall be reduced in accordance with part 4206 of this chapter.

§ 4208.8 Multiple partial withdrawals in one plan year.

(a) *General rule.* If an employer partially withdraws from the same multi-employer plan on two or more occasions during the same plan year, the rules of § 4208.4 shall be applied as modified by this section.

(b) *Partial withdrawals under section 4205 (a)(1) and (a)(2) in the same plan year.* If an employer partially withdraws from the same multiemployer plan as a result of a 70-percent contribution decline and a partial cessation of the employer's contribution obligation in the same plan year, the employer shall not be eligible for abatement under § 4208.4 (b) or (c)(2) or under paragraph (c) of this section. The employer may qualify for abatement under § 4208.4(a) and (c)(1) and under any rules adopted by the plan pursuant to § 4208.9.

(c) *Multiple partial cessations of the employer's contribution obligation.* If an employer permanently ceases to have an obligation to contribute for more than one facility, under more than one collective bargaining agreement, or for one or more facilities and under one or more collective bargaining agreements, resulting in multiple partial withdrawals under section 4205(b)(2)(A) in

the same plan year, the abatement rules in § 4208.4(b) shall be applied as modified by this paragraph. If an employer resumes work at all such facilities and under all such collective bargaining agreements, the determination of whether the employer qualifies for elimination of its liability under § 4208.4(b) shall be made by substituting the test set forth in paragraph (c)(1) of this section for that prescribed by § 4208.4 (b)(1)(ii) or (b)(2)(ii), as applicable. If the employer resumes work at or under fewer than all the facilities or collective bargaining agreements described in this paragraph, the employer cannot qualify for elimination of its liability under § 4208.4(b). However, the employer may qualify for a reduction in its partial withdrawal liability pursuant to paragraph (c)(2) of this section.

(1) *Resumption of work at all facilities and under all bargaining agreements.* The test under this paragraph is satisfied if for each of the two consecutive plan years referred to in § 4208.4(b), the employer's total contribution base units for the facilities and under the collective bargaining agreements with respect to which the employer incurred the multiple partial withdrawals exceed 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for those facilities and under those agreements for the base year (as defined in paragraph (d) of this section).

(2) *Resumption at fewer than all facilities or under fewer than all bargaining agreements.* If the employer satisfies the conditions in § 4208.4 (b)(1)(i) and (b)(1)(iii) and paragraph (c)(2)(i) of this section, or the conditions in § 4208.4 (b)(2)(i) and (b)(2)(iii) and paragraph (c)(2)(ii) of this section, as applicable, the employer's withdrawal liability shall be partially waived as set forth in paragraph (c)(2)(iii) of this section.

(i) With respect to a resumption of work under § 4208.4(b)(1), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(1), the employer's contribution base units for any reentered facility or agreement exceed 30 percent of the number of contribution base

units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(ii) With respect to a resumption of work under § 4208.4(b)(2), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(2), the employer's contribution base units for any reentered facility or agreement exceed 90 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(iii) The employer's reduced withdrawal liability and, if any, the reduced annual payments of the liability shall be determined by adding the average number of contribution base units that the employer is required to contribute for those two consecutive years for that facility(ies) or agreement(s) to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA. The amount of any remaining partial withdrawal liability shall be paid over the schedule originally established starting with the first payment due after the revised payment schedule is issued under § 4208.3(c)(4).

(d) *Base year.* For purposes of this section, the base year contribution base units for a reentered facility(ies) or under a reentered agreement(s) are the average number of contribution base units for the facility(ies) or under the agreement(s) for the two plan years for which the employer's contribution base units for that facility(ies) or under that agreement(s) were highest within the five plan years immediately preceding the partial withdrawal.

§ 4208.9 Plan adoption of additional abatement conditions.

(a) *General rule.* A plan may by amendment, subject to the approval of the PBGC, adopt rules for the reduction or waiver of partial withdrawal liability under conditions other than those specified in § 4208.4, provided that such conditions relate to events occurring or factors existing subsequent to a partial withdrawal year. The request for PBGC approval shall be filed after

the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. A plan amendment under this section may not be put into effect until it is approved by the PBGC. An amendment that is approved by the PBGC may apply retroactively.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the IRS and the three-digit Plan Identification Number (PIN) assigned to the plan by the plan sponsor, and, if different, also the EIN-PIN last filed with the PBGC. If an EIN-PIN has not been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) The date on which the amendment was adopted;

(ii) The proposed effective date;

(iii) The full text of the rules on the reduction or waiver of partial withdrawal liability; and

(iv) The full text of the rules adjusting the reduction in the employer's liability for a subsequent partial or complete withdrawal, as required by section 4206(b)(1) of ERISA.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in